

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

KEVIN G. SMITH,

Plaintiff,

vs.

RICK EBERHARDT, Pierce County  
Sheriff; and JASON DWINELL, Wayne  
County Sheriff,

Defendants.

**8:21CV46**

**MEMORANDUM  
AND ORDER**

Plaintiff, a non-prisoner, filed his pro se Complaint (Filing 1) on February 8, 2021, and has been granted leave to proceed in forma pauperis. The court now conducts an initial review of the Complaint to determine whether summary dismissal is appropriate under 28 U.S.C. § 1915(e)(2).

This case is duplicative of Case No. 8:20CV357, which Plaintiff filed on September 3, 2020. That case was dismissed without prejudice on January 26, 2021, when Plaintiff failed to prosecute the action and failed to comply with the court's order that he file an amended complaint. After the court denied Plaintiff's motion for relief from judgment on January 28, 2021, he filed a notice of appeal.<sup>1</sup> Plaintiff's appeal remains pending before the United States Court of Appeals for the Eighth Circuit Court.

Section 1915(e)(2) allows this court to dismiss a duplicative complaint that raises issues that are directly related to issues in another pending action brought by the same party. *Aziz v. Burrows*, 976 F.2d 1158 (8th Cir. 1992); *see Crozier v.*

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<sup>1</sup> The court advised Plaintiff, "Because this action was dismissed without prejudice, Plaintiff is free to file a new lawsuit raising the same claims." (Case No. 8:20CV357, Filing No. 12.) Rather than filing a new lawsuit at that time, however, Plaintiff decided to file an appeal. He can't do both things at once.

*Westside Cmty. Sch. Dist.*, No. 8:20CV200, 2020 WL 6741661, at \*2 (D. Neb. Nov. 17, 2020) (dismissing duplicative case on initial review); *Hansen v. Vampola*, No. 4:07CV3074, 2007 WL 1362689, at \*2 (D. Neb. Apr. 16, 2007) (same); *Magers v. Gensler*, No. 407CV3093, 2007 WL 1340707, at \*1 (D. Neb. Apr. 9, 2007) (same); *Moore v. Nebraska Health & Hum. Servs.*, No. 407CV3056, 2007 WL 1340405, at \*1 (D. Neb. Mar. 26, 2007); *Pavon v. Madison Cty. Sheriff*, No. 4:07CV3020, 2007 WL 257667, at \*1 (D. Neb. Jan. 24, 2007); *Kriz v. 12th Jud. Dist Bd of Mental Health of Box Butte Cty.*, No. 4:05CV3253, 2005 WL 2563040, at \*1 (D. Neb. Oct. 11, 2005) (same).

Rather than dismiss the case at this time, however, the court will allow the case to remain on file but will not conclude its initial review of Plaintiff's Complaint until the appeal in Case No. 8:20CV357 is fully complete. In the unlikely event that Plaintiff is successful in that appeal, the present action will then be dismissed as duplicative; otherwise, the initial review will proceed after the appeal is completed.

IT IS THEREFORE ORDERED:

1. The court's initial review of Plaintiff's Complaint filed in this matter will not be concluded until after Plaintiff's appeal in Case No. 8:20CV357 is fully complete.

2. The clerk of the court is directed to set a pro se case management deadline with this text: **September 24, 2021**, check on status of appeal in Case No. 8:20CV357.

Dated this 24th day of March, 2021.

BY THE COURT:



Richard G. Kopf  
Senior United States District Judge